IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

OP.No. 14334 of 2000(F)

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PETITIONER:

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THE MANAGER, CHOKANAD ESTATE, TATA TEA LTD.,
MUNNAR.

BY ADV. SRI.ANTONY DOMINIC
SRI.E.K.NANDAKUMAR

RESPONDENTS:

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1. GENERAL SECRETARY, WORKER'S CONGRESS,
M.P.IX/604, HIGH RANGE CLUB ROAD, MUNNAR.

2. LABOUR COURT, ERNAKULAM.

BY ADV. SRI.P.RAMAKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:
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EXT.P1 TRUE COPY OF COMPLAINT DT. 2-5-1992.

EXT.P2 TRUE COPY OF REFERENCE ORDER.

EXT.P3 CLAIM STATEMENT FILED BY R1.

EXT.P4 COUNTER STATEMENT FILED BY MANAGEMENT.

EXT.P5 DEPOSITION OF THE WORKMAN.

EXT.P6 LETTER OF RESIGNATION PRODUCED BY PETITIONER.

EXT.P7 AWARD PASSED BY R2.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 14334 of 2000

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Dated this, the 15th December, 2006.

J U D G M E N T

Management in I.D.No. 197/1992 before the Labour Court, Ernakulam is the petitioner in this original petition. The petitioner challenges Ext. P7 award passed by the Labour Court in that I.D which was passed in favour of the workman involved in the dispute. The issue referred for adjudication was:

> "Whether the denial of employment to Sri. Yesudas No. 3322, South Division, Chockanad Estate is justifiable? If not what relief he is entitled to?"

2. There is no dispute that the workman concerned, namely, Sri. Yesudas, was a workman of the management. In the claim statement, the Union set up a case that on 1-2-1989 the workman was orally denied employment. The case of the workman was that the management alleged that on 31-1-1989, the workman along with one Sri. Victor, committed theft of four bags of tea dust and thereafter the management denied employment to the said Yesudas on 1-2-1989. According to the Union, the management lodged a complaint before the police regarding theft on 4-2-1989, consequent to which the workman was arrested on 9-2-1989, and was released on bail later. Thereafter, by judgment dated 17-5-1990, the I Class Magistrate Court, Devikulam acquitted the workman in C.C.No. 67/1989. After acquittal, the workman is stated to have approached the management for employment without any success. On these allegations, the Union claimed that the workman should be reinstated with full backwages and consequential benefits.

3. In the counter statement filed by the management, which is Ext. P4, the management contended that there was no denial of employment. According to them, on detection of theft committed by the workman, the workman himself voluntarily submitted a letter of

resignation dated 2-2-1989, which was accepted by the management and accordingly, he was discharged from service by memo dated 7-2-1989. They categorically stated in the counter statement that they did not deny employment to the workman, but the workman voluntarily resigned from service. After adjudicating the dispute, the Labour Court came to the conclusion that the resignation letter, which is produced as Ext. P6 along with the original petition, cannot be considered as a resignation at all since, going by the English translation of Ext. P6, it only stated that "Sri. Yesudas, No. 3322 requested the management to settle his account with the Company." The Labour Court relied on the fact that the management has not replied to the several letters issued by the workman to the management. After finding that the above said letter cannot be accepted as a resignation letter, the Labour Court also found that it cannot agree with the management that the same was a voluntary resignation of the workman from service. On these findings, the Labour Court found that the workman was in fact denied employment by the management and directed reinstatement with full backwages and continuity in service and other attendant benefits. Ext. P7 award is under challenge in this original petition.

4. The contention of the petitioner before me is that the findings of the Labour Court is demonstrably perverse. Counsel mainly relies on the deposition of the workman himself before the Labour Court. In cross-examination, he specifically admitted as follows:

Translated into English it means:

> "After tea was found stolen from the estate factory on 31-1-89, I resigned on 2-2-89 and had given letter to the estate manager requesting settlement of accounts. The said letter is the one shown to me."

Counsel would argue that this is a categoric admission by the workman that Ext. P6, which is Ext. M1 in the I.D was a resignation letter and he also accepted that he had written that letter. But, his contention was that he was made to write that letter on 2-2-1989 under coercion and threat of physical harm by the Dy. S.P, S.I and estate manager. Counsel submits that once the workman admitted that Ext. P6 herein is the letter of resignation submitted by him and he claimed that it has been given under coercion, the onus of proving that the same was given under coercion squarely fell with the Union and the workman. They have not cared to discharge that onus. In so far as there is no evidence to show that there was coercion on the part of the management in getting the resignation letter executed, the evidence in the award is patently perverse, is the submission of the learned counsel for the petitioner.

5. All these contentions are vehemently opposed by the counsel for the Union. He would submit that the very conduct of the management shows that their action is not bona fide. They have categorically stated that the resignation letter dated 2-2-1989 was accepted by the management and the workman was relieved from the service of the management by letter dated 7-2-1989. But, no document dated 7-2-1989 has been produced as evidence. Further, in Ext. M2 letter written by the workman to the management, which was produced by the management themselves, it had been specifically stated that the workman sent several communications to the

management seeking reinstatement in service, which has not been replied to. The contention of the management that the management did not receive those letters is hollow since at least when Ext. M2 letter was received stating that the workman had earlier written several letters, the minimum expected of a prudent management is to write a reply stating that the management had not received any such letters failure of which would entail an adverse inference against the management regarding receipt of those letters. Counsel heavily relies on the fact that after stating that the workman's accounts were settled in 1989, the management deposited the gratuity due to the workman before the Deputy Labour Officer only on 20-3-1992, which itself would go to a great extent in disproving the contentions of the management. On these arguments, learned counsel for the Union would canvass for a dismissal of the original petition.

6. I have considered the rival arguments in detail.

7. I am conscious of the fact that in so far as the entire arguments revolve around the issue of evidence only, I can interfere with Ext. P7 award only if I find that the findings therein are demonstrably perverse. Therefore, let me see whether from the pleadings and evidence before me, the finding in Ext. P7 award can be stated to be demonstrably perverse.

8. The I.D was raised by the Union by filing Ext. P1. Ext. P1 does not say anything about a resignation, much less as one obtained by coercion. It simply says that the services of the workman were terminated by the management on oral orders on 1-2-1989 and on his acquittal by the criminal court, he requested the management to reinstate the workman and therefore the Deputy Labour Oficer may look into the matter and direct the management to reinstate the workman with all benefits. The Union filed a claim statement before

the Labour Court in which also the only contention was that after the theft of tea was detected in the tea estate on 31-1-1989, the workman was denied employment orally on 1-2-1989. It is specifically stated thereafter that the management lodged a complaint before the police on 4-2-1989 and the workman was arrested on 9-2-1989 and later enlarged on bail. The Union would submit that the workman was acquitted by the criminal court on 17-5-1990 and the Union made the complaint on 2-5-1992. To this claim statement, the management filed a counter statement specifically stating that they did not deny employment to the workman, but the workman left the services voluntarily by resignation on 2-2-1989, which was accepted on 7-2-1989 and he was discharged from service. They would submit that although the workman was involved in the theft of tea leaves, the management did not on their own discharge the workman from service. But, on detecting the theft by the workman, he himself voluntarily submitted the resignation letter and left the service. The Union did not find it necessary to file a rejoinder statement to this. Thereafter, in the evidence of the workman, relevant portion of which has been quoted by me above, the workman himself categorically admitted that on 2-2-1989, he resigned and requested the manager to settle his accounts. He also admitted that that letter was written by him. He neither had a case that the letter was not written by him nor that it is not a resignation letter. On the other hand, after admitting the resignation, he tried to set up a new case that the letter was written by him under coercion by the Dy. S.P, S.I and the estate manager under threat of physical harm. In this connection, I must straight away note one thing. Even according to the Union in the claim statement, the management had lodged a complaint before the police regarding theft on 4-2-1989, admittedly, the resignation letter

was written on 2-2-1989. This itself goes to a very great extent to disprove the contention of the workman that on 2-2-1989, he signed the letter under coercion since he did not even attempt to explain the presence of Dy. S.P and S.I in the estate on 2-2-1989 when, as admitted by the Union themselves, the complaint to the police was made only on 4-2-1989. Once the workman categorically admitted that the letter written by him on 2-2-1989 was in fact a resignation letter, which was obtained from him under threat and coercion, it was squarely on the Union to prove that the said letter was obtained by coercion at the time of examination of the workman. Absolutely no effort whatsoever is seen made by the Union in this behalf before the Labour Court. In this connection, the management relies on a decision of the Allahabad High Court in Delta Engineering Company (Private) Ltd., Meerut v. Industrial Tribunal V, Meerut and others, 1998 (2) LLN 493. The issue decided in that case was as to burden of proof. In the same, in paragraphs 8 and 9, the said High Court held as follows:

> "8. There are a number of decisions fortifying the above view. In Airtech Private Ltd. v. State of Uttar Pradesh and others [1984 (49) F.L.R. 38], this Court after consideration of provisions of S. 5 of the Uttar Pradesh Industrial Disputes Act and rule 12 of the Uttar Pradesh Industrial Disputes Rules, held that the burden of proving the case referred to the Labour Court for adjudication by the Government lies on the workman. The distinction between a burden of proof and the onus of proof is well known. It is trite that the burden of proof never shifts. It is the onus which keeps on shifting from stage to stage. The Labour Court patently erred in holding that "keeping in view the terms of the reference made by the State Government the burden of proof lay upon the employees."
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> The matter can be looked at from another angle, which party will fail if the evidence is not led before the Labour Court in proceedings in a reference made to it for adjudication by the State Government? The obvious answer is that the workman will fail. Here the reference was made by the State Government at the instance of the workmen and for the benefit of the workmen. In the absence of any evidence led by or on behalf of the

workmen the reference is bound to be answered by the Court against the workmen. In such a situation, it is not necessary for the employers to lead any evidence at all. This matter was dealt with by the Supreme Court in Shankar Chakravarti v. Britannia Biscuit Company, Ltd. [1979 (2) L.L.N. 72]. In Para 29, at page 86, it held that:

> " . . . . .the Labour Court or the Industrial Tribunal has all the trappings of a Court."

In Para 30, at page 86, it held that:

> " . . . . . any party appearing before a Labour Court or Industrial Tribunal must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence . . . . ."

Similar view has been taken by a Division Bench of this Court in the case V.K. Raj Industries v. Labour Court and others, [1981 (2) L.L.N. 498] and a recent decision Meritec India Ltd. v. State of Uttar Pradesh and others [1996 - I L.L.J. 23]

9. It may be made clear here that the view taken by the Labour Court that in the absence of the evidence adduced by the employers the averments made by the employees in their written statement stood proved, was erroneous. The primary burden of establishing the fact that thumb impressions/signatures of the employees were obtained by the petitioner on blank papers and such papers were subsequently used as resignation letter to the disadvantage of the employees and further that the consent for resignation was taken on false promise and inducement which was not intended to be fulfilled will always remain upon the employees at whose instance the reference was made. It is only after the evidence in support of such pleas is adduced that the petitioner is called upon to prove that the employees had voluntarily tendered their resignations and the same were accepted by the petitioners on 7 October 1997."

Counsel for the petitioner would also rely on the decision of K. Kanakarathnam v. Perumal and another, AIR 1994 Madras 247 on that point, in which, in paragraph 7, it is held as follows:

"7. . . . . Order 6, Rule 4 C.P.C., says:

> "In all cases in which the party pleading relies on any misrepresentation, fraud breach of trust, wilful default, or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading".
>
> It is settled law that as per this rule, necessary and material facts should be pleaded in support of the case set up and that in the absence of pleadings, evidence if any produced cannot be considered. The object of the rule is that in order to have a fair trial it is imperative that the party should state the essential material facts so that the other party may not be taken by surprise. No doubt, the learned counsel for the defendant argued that the pleadings should receive liberal construction and that if the parties knew the case and proceeded to trial on a certain issue by producing evidence, it would not be open to the other party to raise a question of absence of pleadings in appeal. But, we do not think such a liberal construction is warranted in this case."

In proceedings before the Labour Court, strict rules of evidence and pleadings may not be applicable> But I am of opinion that even then the basic principles regarding the burden of proof and onus of proof cannot be totally discarded even in industrial disputes. In this connection, I am in respectful agreement with the above said decisions of the two High Courts, especially that of the Allahabad High Court, which directly deals with onus of proof in an industrial dispute. The primary burden of proving the case before the Labour Court on a reference at the instance of the Union or the workman is on the Union or the workman itself. The Union or the workman never even referred to any resignation letter in any of their communication or pleadings and when they did not find it necessary to deny the case of resignation set up by the management in their written statement, by filing a rejoinder statement, when the workman himself admitted in his deposition that he in fact resigned but under coercion, there cannot be any doubt whatsoever that the onus of proving that fact lies squarely on the workman or the Union. As I

have observed earlier, the Union and the workman have not attempted to discharge that burden by adducing any evidence whatsoever. I find that the deposition of the workman himself would show that the allegation of coercion would be false since, even according to the Union, the complaint before the police was made on 4-2-1989 and according to him, the Dy. S.P and S.I along with the estate manager coerced him on 2-2-1989. When the management filed the complaint only on 4-2-1989, the Union or the workman had the onus of explaining the presence of Dy. S.P and S.I on the estate on 2-2-1989, the attempt at which is also sadly lacking in this case.

9. There is another aspect also. Even according to the workman, he was denied employment on 1-2-1989. Although he was arrested on 9-2-1989, he was enlarged on bail later. He had no case that he approached the management between 2-2-1989 and 17-5-1990 when the Magistrate acquitted him. Even thereafter, the Union took two more years to file a complaint before the District Labour Officer by Ext. P1 dated 2-5-1992. Of course, an attempt has been made to show that in between, the workman had demanded employment with the management, but that has neither been proved nor disproved. There is one circumstance which would favour the workman, which is that the management deposited the gratuity with the District Labour Officer only on 20-3-1992. In the light of the overwhelming evidence against the workman, this fact pales into insignificance.

10. An overall assessment of the evidence would categorically show that the Labour Court misdirected itself in assessing the evidence and even went to the perverse finding that the resignation letter cannot be construed as a resignation letter when the workman himself categorically admitted in his deposition that it was a resignation letter, but he clarified the same by saying that it was

obtained under coercion. Once the workman admitted that, the Labour Court ought to have looked for sufficient evidence to prove coercion on the part of the management instead of construing the letter as not a resignation letter. In the above circumstances, I have no doubt in mind that the conclusions arrived at by the Labour Court is demonstrably perverse on the evidence before it and no judicial mind could have come to that finding it reached based on that evidence.

The result would be that the award is liable to be quashed. I do so. I further declare that the evidence before the Labour Court is sufficient to prove that the workman in fact resigned from the services of the management and therefore he is not entitled to any relief in the I.D. The original petition is allowed as above, but without any order as to costs.

S. Siri Jagan, Judge.

Tds/

S. Siri Jagan, J.

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O.P. No. 14334 of 2000

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J U D G M E N T

15th December, 2006.